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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re J.C., a Person Coming Under the Juvenile
Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.C.,

Defendant and Appellant.

F056777

(Super. Ct. No. 515358)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Stanislaus County. Nancy B. Williamsen, Commissioner.

Gregory M. Chappel, under appointment by the Court of Appeal, for Defendant and Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Wiseman, A.P.J., Levy, J., and Cornell, J.

S.C. appeals from a juvenile court's dispositional order denying him reunification services (Welf. & Inst. Code, § 361.5, subd. (e)(1)) as to his infant son, J.C.¹ The court reached its decision having found appellant was incarcerated and services would be detrimental to the child. Appellant claims there was no evidence presented to support the court's finding. On review, we disagree and affirm.

PROCEDURAL AND FACTUAL HISTORY

At his birth in October 2008, J.C. and his mother tested positive for methamphetamine. The mother had an extensive history of methamphetamine abuse and repeatedly failed at attempts to rehabilitate herself. She also behaved erratically while she was in the hospital, as well as by leaving the hospital before discharge and later refusing readmission. Meanwhile, appellant was serving a two-year prison term for possession and/or purchase of narcotics and/or controlled (Health & Saf. Code, § 11351), and could not arrange for J.C.'s care.

Based on these circumstances, respondent Stanislaus County Community Services Agency (agency) placed the infant in protective custody and initiated the underlying dependency proceedings. The Stanislaus County Superior Court, sitting as a juvenile court, in turn exercised its dependency jurisdiction over J.C. based on the above-stated facts (§ 300, subds. (b) & (g)). It also set the case for a dispositional hearing in December 2008.

Due to appellant's incarceration, he did not appear at the outset of the proceedings and the agency's social workers did not have face-to-face contact with him. Nonetheless, the juvenile court appointed counsel to represent him. The agency also wrote to appellant requesting information regarding his circumstances and his wishes for J.C. Appellant apparently did not reply to these requests. However, he did complete a "Statement

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Regarding Paternity” (a Judicial Council form) in which he claimed to be J.C.’s father. Appellant’s attorney presented the statement to the court which eventually treated appellant as the child’s presumed father.

In advance of the dispositional hearing, the agency submitted a written report in which it recommended the court remove J.C. from parental custody, grant the mother six months of reunification services, and deny appellant services because it would be detrimental to the child. According to the agency’s report, appellant remained incarcerated “with a reported out date in June 2009.” The length of his sentence prohibited completion of a reunification plan within the time provided by law. In addition, due to his incarceration, appellant had no bond with the child and was unable to participate in services to address his substance abuse issues.

At the December 2008 dispositional hearing, the agency called its social worker to testify regarding its recommendation against reunification services for appellant. The social worker reiterated that appellant was incarcerated on a drug charge and had an expected release date in June 2009. Due to his incarceration, appellant had no contact with the child. It was the social worker’s opinion that providing services to appellant would be detrimental to the child. She based her opinion on the length of appellant’s sentence, which would span the time allowed for reunification, the nature of appellant’s crime, and the nonexistent relationship between appellant and the child. Regarding the time period for reunification, appellant would be released more than six months after J.C. was originally detained.²

² Under section 361.5, subdivision (a)(2), for a dependent child under three years of age, court-ordered services shall not exceed six months from the date the child entered foster care. In this case, J.S., who was detained at birth, entered foster care December 5, 2008, the date of the jurisdictional hearing, therefore limiting the length of services to June 5, 2009. (§ 361.5, subd. (a).) The court could extend additional services past that deadline only if the court were to find a substantial probability that the child may be returned within another six months or the agency did not provide reasonable services.

In addition, the social worker testified that given the nature of his crime, appellant would need a period of drug rehabilitation once he was released. Under the circumstances, services would also delay permanency for the child. In the social worker's view, this was a big issue because a child so young needed permanence.

On cross-examination, the social worker acknowledged she did not know and she had not checked to learn if there was any drug rehabilitation available to appellant where he was incarcerated. She had not had contact with appellant or his counselor regarding available services.

After the parties submitted the matter, the court ordered the child removed from parental custody and reunification services provided solely for the mother. The court explained it denied services for appellant pursuant to section 361.5, subdivision (e)(1). It specifically found, by clear and convincing evidence, providing appellant services would be detrimental to the child. The court cited appellant's lack of relationship with the child, making him essentially a stranger to the child, the length of appellant's sentence exceeding the six-month reunification period, and its observation that substance abuse recovery usually takes much longer than a few months. The court also noted it had received no evidence as to existing services where appellant was incarcerated. Finally, the court stated its belief that permanency was paramount for the child. It observed under the law primary permanency was a return home or, under concurrent permanency, adoption.

DISCUSSION

If a parent of a dependent child is incarcerated or institutionalized, the court shall order reasonable reunification services *unless* the court determines, by clear and convincing evidence, those services would be detrimental to the child. (§ 361.5, subd.

(§ 366.21, subd. (e).) For older children, the general rule is 12 months of reunification services. (§ 361.5, subd. (a)(1).)

(e)(1).) The version of section 361.5, subdivision (e)(1) in effect during the dispositional hearing here provided:

“In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child’s attitude toward the implementation of family reunification services, and any other appropriate factors.”³

Here, there were multiple factors under section 361.5, subdivision (e)(1) supporting the court’s detriment finding. J.C. was less than two months old. There was no parent-child bond. Appellant had a two-year prison sentence which, according to a CLETS report, he began serving in July 2008. The nature of his crime -- the possession and/or purchase of narcotics and/or controlled substances -- was such that he would need drug rehabilitation. Further, given the child’s very young age and non-existent relationship with appellant, the court properly could infer there was no degree of detriment to J.C. if services were not offered to appellant. Thus, based on the plain language of section 361.5, subdivision (a)(1), the juvenile court could determine services would be detrimental. Nevertheless, appellant argues the evidence presented was insufficient to support a detriment finding.

In part, appellant takes exception to the social worker’s testimony -- that he would need a period of drug rehabilitation once he was released -- by challenging its foundation and assuming the social worker was an expert who improperly relied on speculation or conjecture. However, the agency neither offered nor qualified the social worker as an expert witness. More importantly, appellant never objected, on foundation grounds or

³ Effective January 1, 2009, section 361.5, subdivision (e)(1) has been amended to add “the likelihood of the parent’s discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a)” as a factor for the court to consider in determining whether services would be detrimental to a child when a parent is incarcerated or institutionalized. (Stats. 2008, ch. 482, § 1.7.)

any other evidentiary ground, to that testimony or the agency's earlier report he had substance abuse issues, which would require treatment.

Having failed to so object in the juvenile court, appellant has waived his foundation argument on appeal. (Evid. Code, § 353.) While he still may challenge the sufficiency of the evidence to support the detriment finding (*In re P.C.* (2006) 137 Cal.App.4th 279, 287-288), the evidence before the court remains uncontested he had substance abuse issues that would require a period of drug rehabilitation upon his release. Also, although the agency had the burden of establishing detriment (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 519), there was nothing preventing appellant from introducing evidence that he either did not have substance abuse issues or could access rehabilitative services while in prison such that he could provide a safe home for J.C. upon release from prison.

This leads us to appellant's other major contention, namely that the mere fact his release would occur following the six months designated for services does not equate with detriment. He relies on *In re Kevin N.* (2007) 148 Cal.App.4th 1339, 1344 (*Kevin N.*), for the proposition that a finding that services would be futile due to the length of a parent's incarceration is not the same as a finding that services would be detrimental to the child. Although the *Kevin N.* court did make such an observation, appellant overlooks the context in which the observation was made, a context that renders *Kevin N.* distinguishable from and thus not pertinent to this case.

In *Kevin N.*, the trial court denied an incarcerated parent reunification services with regard to his 12- and 15-year-old children based on a mistaken belief services were limited to six months and without making the required finding that services would be detrimental to the children. (*Kevin N.*, *supra*, 148 Cal.App.4th at p. 1341.) Instead, the trial court found services would be futile even if offered for 18 months because the parent would only get out of prison a month before that period end. (*Id.* at p. 1344.) Because

the trial court never addressed the issue of detriment, the order denying services had to be reversed. (*Id.* at p. 1345.) It was in this context the *Kevin N.* court observed that finding services would be futile is not the same as finding services would be detrimental to the children.

The pending case involves altogether different circumstances. Given J.C.'s young age, services were restricted to six months, with very limited exceptions. The juvenile court not only addressed the issue of detriment but also made an express finding, by clear and convincing evidence, of detriment under section 361.5, subdivision (e)(1). Further, the juvenile court did not deny appellant services based on a finding that services for appellant would be futile.

Here, it was undisputed appellant would need a period of drug rehabilitation, whether it be treatment or aftercare, upon his prison release. An order for services therefore would raise the prospect of futility because of the statutory six month services' cap as well as the fact that appellant would not be released in less than six months' time. However, this was not the only factor favoring a detriment finding in this case. As previously described, there were multiple factors, including the child's very young age, the lack of any parent-child bond, the nature of appellant's crime, and the reasonable inference there was no degree of detriment to J.C. if services were not offered, supporting the court's detriment finding under section 361.5, subdivision (e)(1).

DISPOSITION

The dispositional order denying appellant reunification services is affirmed.